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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,861	12/15/2005	Peter C. Brazier	9223B	8545
George M Fisher Miliken & Company M-495 920 Miliken Road P O Box 1926 Spartanburg, SC 29304				
7590 05/30/2008			EXAMINER JUSKA, CHERYL ANN	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 05/30/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/516,861

**Applicant(s)**

BRAZIER ET AL.

**Examiner**

Cheryl Juska

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-35 and 38-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-35 and 38-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed January 15, 2008, has been entered. Claims 36 and 37 have been cancelled. Thus, the pending claims are 29-35 and 38-58.
2. Said amendment renders moot the 112, 2<sup>nd</sup> rejection of claims 36 and 37 as set forth in sections 1-3 of the last Office Action (Non-Final Rejection mailed 06/25/2007).

### ***Double Patenting***

3. Claims 29-35 and 38-58 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 22-46 of copending Application No. 10/516,967 as set forth in section 5 of the last Office Action.
4. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 29-35, 38-53, and 56-58 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,968,631 issued to Kerr in view of US 6,896,964 issued to Kvesic as set forth in section 8 of the last Office Action.

Applicant has not amended the claims to overcome the prior art rejection. Rather, applicant traverses on the grounds that one would not have a reasonable expectation of success in modifying the floor mat of Kerr with the rubber backing of Kvesic since the two references employ different methods of producing rubber backings (Amendment, paragraph spanning pages 7-8 – 3rd paragraph, page 8). Specifically, Kerr forms the rubber backing for the floor mat by extrusion while Kvesic employs a “mixing-and-curing system,” wherein the materials of Kvesic would not be capable of being extruded by the methods of Kerr (Amendment, page 8, 2<sup>nd</sup> paragraph).

In response, the present rejection is based upon the obviousness of substitution of the rubber backing on the Kerr floor mat with another known floor mat rubber backing (e.g., the Kvesic rubber backing comprising a plurality of voids). One skilled in the art would readily understand that said substitution would entail producing the Kvesic rubber mat as taught by Kvesic and not attempt to substitute the materials of Kvesic in the process of Kerr. One would recognize, as applicant has, that the materials of Kvesic are not suited for extrusion. However, this does not suggest that said substitution would not be obvious. It merely renders obvious the substitution of the Kvesic rubber backing made by the Kvesic process for the backing of the Kerr floor mat. Note applicant is not claiming a process or even a product-by-process claim. Hence, the substitution of one known floor mat rubber backing for another known floor mat rubber backing is held obvious over the prior art. The rejection is maintained.

7. Claims 54 and 55 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,968,631 issued to Kerr in view of US 6,896,964 issued to Kvesic as applied to claim 22 above

and in further view of WO 96/38298 issued to Burke as set forth in section 10 of the last Office Action.

Applicant traverses the rejection by asserting the Burke reference does not cure the deficiencies of Kerr and Kvesic. Since the rejection of Kerr and Kvesic has not been found deficient, the rejection of claims 54 and 55 also is maintained.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

9. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at

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571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/*  
Primary Examiner  
Art Unit 1794